

OGC Has Reviewed

Approved For Release 2001/11/16 : CIA-RDP77M00144R000800110048-3

This memorandum was incorporated
into OLC 75-0929, 27 May 1975

Approved For Release 2001/11/16 : CIA-RDP77M00144R000800110048-3

OLC 75-1003
OGC 75-1801
5 May 1975

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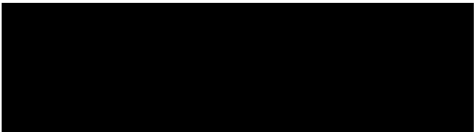
NOTE FOR:  OLC

SUBJECT: OLC Memorandum: Electronic Surveillance Legislation

We suggest only the addition of language which will stress more strongly the constitutionally intolerable situation that would result from any legislation that attempts to make the President's power to authorize foreign intelligence surveillance subject to prior judicial approval. This might be done by insertion of the following or similar language after the first sentence of the last paragraph on page 5:

To be sure, a requirement of prior judicial authorization of foreign intelligence surveillances may cause some delays and the risk of leaks. But the real objection is that it would attempt to share authority with a judicial officer having no expertise in or responsibility for national security or foreign affairs. Thus, the necessity of a foreign intelligence surveillance is simply inappropriate for judicial resolution. Since this Presidential authority is constitutional in nature and stems from a fundamental separation of governmental powers, a Congressional attempt to require the sharing of it with the judiciary would certainly lead to protracted constitutional litigation.

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